IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: 21.11.2006

New India Assurance Company Ltd.

...Appellant

versus

Prem Kaur and others

... Respondents

CORAM:- Hon'ble Mr. Justice Uma Nath Singh.
Hon'ble Mr.Justice Mahesh Grover.

Present: Mr.R.K.Bashamboo, Advocate
for the appellant.
Mr.R.K.Kakkar, Advocate
for respondent Nos.1 to 4.

UMA NATH SINGH, J. (ORAL)

This FAO arises out of an award dated 21.10.2004 passed by learned Presiding Officer, Motor Accident Claims Tribunal, Sonipat, in MACT Case No.187 of 2002, awarding a sum of Rs.25,11,000/- in death case of a 50 years' old man.

It appears that vide order dated 7.2.2006 of this Court, learned counsel for the appellant insurer had taken a plea that application filed under Section 170 of the Motor Vehicles Act, 1988 (for short `the Act') after the closure of the evidence before the Tribunal, was still pending, and it was not disposed of before or with the award. Even though the Tribunal had become functus officio to decide any matter pertaining to this case but under the direction of this Court in the aforesaid order, the Tribunal has decided and disposed of the application vide order an dated 29.3.2006,

which is also under challenge before us.

We have perused the order so also the contents of the application filed before the Tribunal under Section 170 of the Act. The only ground urged in the application, according to learned counsel, appears to be that the driver of the offending vehicle did not participate and appear in the proceedings before the Tribunal. Nonetheless, the owner of the vehicle has appeared and contested the case throughout. Moreover, he has been effectively cross-examined by the insurance and the claimants. That apart, in such cases, even if a driver is fastened with liability jointly and severally, in terms of a judgment of Hon'ble the Apex Court rendered in 1995 ACJ 1021 (State of Maharashtra and others versus Kanchanmala Vijaysing Shirke and others), the owner would become vicariously liable to discharge the liability. Besides, learned counsel has no other contention to make and ground to urge. He candidly submitted that the application under Section 170 of the Act was not based on collusion between the owner and the claimants. As regards the breach of the conditions of policy, learned counsel for the insurer has no submission to make.

Hence, this FAO, being devoid of merits, is dismissed as such.

(UMA NATH SINGH)
JUDGE

November 21, 2006 **(MAHESH GROVER)**
pk **JUDGE**